

NOTE: This material is dated and is provided as general guidance for best practices. Please check for any updated statutes, rules, or online procedures that might apply. See also, Chapter 13 Adequate Protection Order.

PRACTICE GUIDELINES MEMORANDUM

TO: Attorneys Practicing Before Me and
Other Interested Persons

FROM: C. Timothy Corcoran, III
United States Bankruptcy Judge

DATE: March 16, 1994 (Revised July 1, 1998)

RE: Sample Forms of Adequate Protection Orders,
"Drop Dead" or Default Motions and Affidavits,
and Final Orders Granting Relief from Stay.

The sample forms of orders that I have set forth following this memorandum illustrate compliance with my desires as to adequate protection orders, "drop dead" or default provisions, motions for final order granting relief from stay, affidavits of default, and final orders granting relief from stay upon default of adequate protection requirements. Although I discuss these matters in narrative form in my Practice Guidelines Memorandum on preparing and submitting proposed forms of orders, these samples illustrate compliance with the principles described in that memorandum. I have therefore prepared the samples that follow in the hope that attorneys practicing before me will find them helpful.

In reviewing these samples, please keep in mind the following points:

1. These samples are not intended by me to be required forms. They merely illustrate compliance with the principles described in my memorandum. Other forms of orders, motions, and affidavits can similarly comply with my principles and, when they do, are equally satisfactory to me.

2. These samples are not intended to cover all situations that may arise in cases. Tailoring to the circumstances is always required. Please do not use these illustrations as forms in circumstances where they do not apply.

3. In these samples, language contained within brackets is meant to be alternative language to that contained within the brackets immediately following or preceding.

I am hopeful that this memorandum with its sample forms will be of assistance to counsel. If you still have questions about drafting after reviewing the Practice Guidelines Memorandum on preparing and submitting orders and these sample forms, please feel free to raise them with my law clerk, Cheryl Thompson, who can be reached at (813) 301-5200.

4. Include whatever additional terms as the parties agree, such as grace periods different from the contract terms, creditor's access to the property for inspection purposes, debtor's providing proof of insurance, and the like.
5. Please note that telephonic notice is not part of my default procedure (described in the following paragraph of this sample order). Nevertheless, the parties are free to include whatever notice of default and cure provisions they wish to include, including telephonic notice.
7. The motion for final order of relief from stay should be filed and served only after all grace or cure periods have passed.

8. In the event the debtor defaults in any of the debtor's obligations to provide adequate protection under the terms of this order and [after the creditor's compliance with the notice of default and grace provisions set forth in the contract documents] [after the creditor's compliance with the notice of default and grace provisions set forth above], the court will consider further relief from the stay as follows:

a. The creditor may file and serve a motion for final order of relief from stay supported by an affidavit containing specific facts that are admissible in evidence establishing the debtor's default under the terms of this order.

b. The debtor shall have [as agreed] days from the date of service of the motion for final order to file and serve an affidavit containing specific facts that are admissible in evidence disputing the creditor's evidence of default.

c. If the debtor files such a contravening affidavit, the court will set down for hearing on an expedited basis the creditor's motion for final hearing. At the hearing, the court will determine the disputed claim of default and determine the motion accordingly. The court will not entertain other defenses.

d. If the debtor fails to file such a contravening affidavit within the time permitted, the creditor may submit for the court's consideration a proposed form of order granting the motion for final order. Upon receipt of the proposed form of order, the court will consider the motion for final order in chambers without further notice or hearing.

DONE and ORDERED at Tampa, Florida, this ____ day of _____, 199X.

C. TIMOTHY CORCORAN, III
United States Bankruptcy Judge

Copies Furnished To:

CASE STYLE

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ROCK SOLID BANK'S MOTION FOR
FINAL ORDER OF RELIEF FROM STAY

Creditor, Rock Solid Bank, by its undersigned attorneys, moves for a final order granting relief from the automatic stay as follows:

1. On _____, 199X, the court entered an order granting adequate protection to the creditor, Rock Solid Bank, as to the following property:

X

Among other things, the order required that the debtor made certain periodic payments to the creditor.

2. As established by the affidavit of John J. Jones, the creditor's assistant vice president and collections manager, which is filed and served contemporaneously, the debtor failed to pay to the creditor the payment due on _____, 199X, in the amount of \$_____. The failure to pay constitutes a default by the debtor under the terms of the court's adequate protection order.

3. The debtor's default constitutes cause to modify the automatic stay to permit the creditor [to commence, prosecute, and complete through final judgment, sale, and certificate of title a mortgage foreclosure action in state

court] [to repossess and sell, and to commence, prosecute, and complete through final judgment and sale a replevin action in state court]. The creditor requests this relief to which it is entitled.

WHEREFORE, creditor prays for the entry of an order granting the relief requested here.

Signature of Attorney

Name of Attorney
Address
Telephone Number:
Florida Bar No.:
Attorney for Creditor,
Rock Solid Bank

Certificate of Service

CASE STYLE)
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AFFIDAVIT IN SUPPORT OF
ROCK SOLID BANK'S MOTION FOR
FINAL ORDER OF RELIEF FROM STAY

STATE OF FLORIDA)
) §§
COUNTY OF HILLSBOROUGH)

BEFORE ME, the undersigned authority, personally
appeared John J. Jones, who, being duly sworn, deposes and says:

1. I am John J. Jones. I am an assistant vice
president and collections manager of Rock Solid Bank.

2. [This affidavit is based upon facts of which I
have personal knowledge.] [This affidavit is based upon the loan
payment records of Rock Solid Bank. These records are regularly
maintained in the course of business of the bank, and it is the
regular practice of the bank to make and maintain these records.
These records reflect loan payments that are noted in the records
at the time of receipt by persons whose regular duties include
recording this information. I maintain these records for the
bank and regularly use and rely upon them in the performance of
my duties.]

3. The debtor, Samuel S. Smith, maintains a loan
Account No. _____, with the bank. The loan represented
by this account is secured by a [mortgage in] [security interest
in] the following property:

X

4. The payment on this loan account due on _____, 199X, in the amount of \$_____, has not been received by the bank as required by the terms of the court's order granting adequate protection.

5. This concludes my affidavit.

John J. Jones

SWORN to and SUBSCRIBED before me, this ____ day of _____, 199X, by John J. Jones, who [is personally known to me] [produced the following type of identification: _____].

[SEAL]

Able B. Charlie
Notary Public, State of
Florida at Large

My Commission Expires:

Certificate of Service

CASE STYLE

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ORDER GRANTING FINAL RELIEF FROM STAY
TO CREDITOR, ROCK SOLID BANK

THIS CASE came on for consideration of the motion for final order of relief from stay filed by creditor, Rock Solid Bank.

The file reflects that the court entered an order on _____, 199X, conditioning the continuance of the automatic stay and granting adequate protection to creditor, Rock Solid Bank, including certain periodic payments to be made by the debtor to the creditor. The order also contained provisions describing the manner in which the court would consider further relief from stay in the event of the debtor's default in the making of the adequate protection payments.

On _____, 199X, the creditor filed and served its motion for final order of relief from stay claiming a default in the debtor's required adequate protection payments. The creditor supported the motion with an affidavit containing specific facts that are admissible in evidence establishing the debtor's default. In the time permitted in the adequate protection order, the debtor did not file a contravening affidavit.

As a consequence, the court concludes that the debtor has defaulted in the making of the adequate protection payments and that cause exists to grant final relief from stay to the creditor. The court therefore orders that:

1. The motion for final relief from stay is granted.

2. Accordingly, the automatic stay is hereby modified to permit Rock Solid Bank [to commence, prosecute, and complete through final judgment, sale, and certificate of title a mortgage foreclosure action in state court with respect to the following property, the legal description of which is:

X.]

[to repossess and sell, and to commence, prosecute, and complete through final judgment and sale a replevin action in state court with respect to the 199X Ford Falcon, VIN 12345678.]

3. The relief granted here permits the creditor to [seek and obtain an in rem judgment] [take action] against the property only and does not permit the creditor to seek or obtain in personam relief against the debtor.

DONE and ORDERED at Tampa, Florida, this ____ day of _____, 199X.

C. TIMOTHY CORCORAN, III
United States Bankruptcy Judge

Copies Furnished To: